

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/8/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Prime Minister/ being in this capacity – his agent the legal counselor Qasim Suhaib Shakoor.

The Defendant: Speaker of the ICR/ being in this capacity – his agents, the Director-General Asst. Prof. Dr. Sabah Jumaa Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff claimed through his agent that because the defendant approved of the Federal Budget Law for the years (2023-2024-2025) published in the Iraqi Gazette No. (4726) dated 26/6/2023, which included the inclusion of several articles that were not included in the draft law submitted by the government to the Council of Representatives or its amendment, whereas these additions constitute a constitutional violation in both formal and substantive terms, as well as a violation of what the constitutional judiciary in Iraq has settled, as follows: First: Article (60) of the Constitution has specified two ways for proposing draft laws, namely (the Council of Ministers, the President of the Republic), it shall not conflict with the general policy of the State, shall not affect the functions or independence of the judiciary, and shall not

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contradict the provisions of the Constitution), the Court has adopted the principle mentioned in many of its decisions, including its decision No. (17/Federal/2017) regarding the Federal Budget Law for the year 2017. Second: The Council of Representatives has violated the aforementioned principles by adding many paragraphs to the challenged law, which introduced the government into many financial obligations contrary to the provisions of Article (62) of the Constitution, as well as approving many provisions that contradict the general policy of the state and the principle of separation of powers, as shown below: 1. Article (2/1<sup>st</sup>/8/Jim/6) of the challenged law granted the governor exclusively the authority to contract with developers following the investment law in force, this contradicts the general policy of the state, which emphasized encouraging investment in all ministries and entities not associated with the ministry and the governorates in order to advance and develop the process of economic and social development, bring technical and practical expertise, develop human resources, create job opportunities for Iraqis by encouraging investments and supporting the process of establishing, expanding and developing investment projects in Iraq at various economic levels, such an amendment would strengthen the government's hand in the field of investment as it limited the scope of contracting with developers to governors exclusively, and this text made the Council of Representatives the body responsible for planning the general policy of the state, and confiscated the powers of ministries and relevant authorities on investment projects contrary to the provisions of the Constitution, under which the Council of Ministers is the body concerned with planning the general policy of the state, it confiscated the powers of ministries and relevant authorities regarding investment projects contrary to the provisions of the Constitution, under which the Council of Ministers is the body concerned with planning the

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general policy of the state, and the Council of Representatives can hold the government accountable if it is the planner of state policy, in terms of being an opponent and a referee at the same time, noting that the budget law above included the establishment of the (Iraq Fund for Development) to improve the attractive investment environment and launch sustainable economic and social development with a capital of (1,000,000,000,000) (trillion dinars) It is linked to the Council of Ministers and enjoys legal personality and financial and administrative independence and branches from it specialized funds that enjoy legal personality and financial and administrative independence, the adoption of such a text means that the Fund is not allowed to enter into any contracts with developers, and this aborts the government's attempts to activate the investment aspect in Iraq through strategic projects that would advance the economic and urban reality in the country, noting that the Council of Ministers had previously issued its Resolution No. (23121) for the year 2023, according to which it formed a technical team to accelerate investment procedures and establish new cities, and that the aforementioned text would undermine what the Council of Ministers did with its decision above. on accelerating investment procedures and establishing new cities, especially that the Council of Ministers is responsible for drawing up and planning the general policy of the state.

2. Article (16/2<sup>nd</sup>) of the challenged law empowers the Council of Ministers, based on the proposal of the minister or the head of an entity not associated with a ministry, to grant an employee with the rank of the general manager who does not manage an administrative formation at the level of a general directorate or an advisor outside the staff, a five-year leave with a nominal salary, or assign him to manage a formation corresponding to his grade or refer them to retirement, but the Council of Representatives added the phrase (at his request), since Iraq

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

witnessed chaos at the level of administrative structures in the state, which resulted in the appointment of general directors without their management of a general directorate or the assignment of consultants, despite the absence of the laws of the authorities in charge of such degrees, so the government sought to address that chaos by adopting a balanced text that does not underestimate the right of those who were appointed in the aforementioned bodies contrary to the law, it does not oblige the government to keep those covered by the aforementioned description without benefiting from their services, and restricting the options stipulated in the said article on the condition that the person covered by it requests to be referred to retirement, even though he does not manage an administrative formation at the level of a general directorate or being a consultant outside the staff, would maintain the situation as it is, as the person covered by the provision of the above article remains in the position and receives his job salary without providing a functional service despite the lack of need for his services. The aforementioned text shall encourage ministries and entities not associated with a ministry to violate the laws in force, the Council of Representatives is the one who provides protection to them by aborting the government's attempts to reform the practices of previous governments that violate the law, in addition to the fact that the involvement of the Council of Representatives itself in the aforementioned subject through the amendment it adopted in the law contradicts the principle of separation of powers affirmed in Article 47 of the Constitution. 3. Article (20/6<sup>th</sup>) of the challenged law granted the sub-committees the authority to submit decisions on the compensation of property whose amounts do not exceed (50) million as an exception to the provisions of Article (13) of Law No. (2) of 2020, and the Central Committee is committed to completing the files and returning them to

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

the subcommittees, within a period not exceeding (30) working days, and since the government seeks to tighten control over public funds through the formation of judicial committees whose task is to ensure the validity of the decisions issued by the committees The adoption of the amended text would lead to the subcommittees being free from the control of the central committees, experience has proven the invalidity of granting subcommittees the authority to decide on compensation decisions for property whose value does not exceed (30,000,000) thirty million dinars by referring hundreds of compensation decisions to the Integrity Commission for proving the existence of manipulation, so is it correct for the Council of Representatives to reward those committees by raising the ceiling specified for them by law in raising compensation decisions without reference to the Council of Ministers, and the adoption of the aforementioned amendment would lead to the waste of public money from During the failure of the money to reach those who deserve it, and this will reflect negatively on the file of compensation for the property of those affected by military operations, military errors and terrorist operations. 4. The Council of Representatives obliges in Articles (28/4<sup>th</sup>/Alif, Be) and (57/1<sup>st</sup> - Jim) to deduct (one-thousandth of a hundred) from the total salary of employees of all ministries, employees of the Ministry of Interior and retirees, and this contradicts the state's policy in reducing the burden on employees of state departments and retirees, especially in light of the government's tendency to review the salaries and allowances of workers in all state departments, in a way that ensures the elimination of discrimination between those with similar positions of employees on the one hand, and on the other hand. The Police Martyrs Fund Law guarantees sources of funding for the Fund that carry out the tasks entrusted to the Fund, and the deduction rate is unclear in terms of its imposition on salary with

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allowances, and whether it is imposed monthly or annually?. In Article (65/2<sup>nd</sup>), the Council of Representatives authorized university councils to contract with the private sector to contract a partnership contract in the field of building teaching hospitals, investment laboratories, scientific production factories, and agricultural investments, contrary to the government project sent to the Council of Representatives, which is considered an interference in the work of the executive authority, especially the Council of Ministers as responsible for planning and implementing the state's public policies. The reality of these institutions as the work of the private sector is governed by the principle of profit and loss. 6. The Council of Representatives legislated Articles (62/4<sup>th</sup> and 63/3<sup>rd</sup>) of the General Budget Law without standing on the opinion of the Council of Ministers, as the Council of Representatives excluded itself from stopping appointments when it stipulated the appointment of (150) contractors as an exception to the provisions of Article (14/4<sup>th</sup>/Alif) of the aforementioned Budget Law, according to which appointment and contracting in all state departments were prohibited, and the Supreme Judicial Council and the Federal Supreme Court were excluded from the provisions of the aforementioned article without specifying a specific number in appointment and contracting and without referring to the government. Responsible for planning and implementing the general policy of the state as it entails added financial burdens on the public treasury and increases the total amounts of expenditures, and it is not permissible to legislate laws without referring to the government or amending texts proposed by the Council of Ministers if they have additional financial effects, and this is what the court's judgment has settled on in many decisions. 7. The Council of Representatives added item (2<sup>nd</sup>) of Article (70) without referring to the Council of Ministers, violating the text of Article (62/2<sup>nd</sup>) by increasing

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the amounts of expenses prescribed for the government project, as well as violating what was established by the court's judgment that the Council of Representatives may not legislate any laws without referring to the government if they have additional financial effects, and it is not clear what led the Council to adopt the work arms disbursed for the period from 1/1/2023 to 1/6/2023, while the disbursement should be Following the principle adopted by the government, which is to give priority to spending on the highest accomplished projects, this amendment would also lead to injustice between governorates, as there are governorates that have been funded in greater proportions than others, and adding what has been spent in additional allocation means unfairness in adding allocations contrary to the government-approved population percentage criteria as a public policy. 8. The text of Article (71) was added to the Federal Budget Law without stipulating it in the government project sent to the Council of Representatives, by obliging the government to terminate the management of all state institutions by proxy no later than 30/11/2023, and this is considered an interference with the tasks of the executive authority, and a violation of the principle of separation of powers stipulated in Article (47) of the Constitution as a purely executive affair contrary to the competencies of the Council of Representatives, especially since the issue of the work of the acting taxpayers was resolved through the government program approved by the Council of Representatives. 9. Article (72) of the Federal Budget Law allows the implementation departments in the Ministry of Justice to collect (2%) of the proceeds of debts collected for their owners and distribute (80%) of them as incentives for implementation employees and (20%) for the purpose of providing requirements and work requirements in the implementation departments above, contrary to the powers of the Council of Representatives, and in violation of the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

principle of separation of powers stipulated in Article (47) of the Constitution, considering that the Council of Ministers is responsible for planning and implementing the general policies of ministries and entities not associated with a ministry, such a provision would also lead to an increase in government spending by reducing government revenues according to the percentages mentioned in the aforementioned article, in addition to the resulting migration of employees from the rest of the departments of the Ministry of Justice to the aforementioned department, and all this contradicts the government's policy of reviewing the salaries and allowances of workers in state departments to ensure the elimination of differentiation between them. 10. Article (75) of the Federal Budget Law adopted the date 31/12/2019 instead of 2/10/2019, and this circumvents the government project in stopping contracts and appointments, as its adoption would increase those covered by Cabinet Resolution No. (315) of 2019, which leads to the expansion of public expenditures, violating the text of Article (62/2<sup>nd</sup>) of the Constitution and increasing the financial burdens on the public treasury. Therefore, the plaintiff / being in this capacity asked this court to rule on the following: Issuing a state order to suspend the implementation of Article (2/1<sup>st</sup>/8/Jim/6) and the phrase (at his request) mentioned in Article (16/2<sup>nd</sup>), Article (20/6<sup>th</sup>), Articles (28/4<sup>th</sup>/Alif, Beh) and (57/1<sup>st</sup>/Jim), Articles (62/4<sup>th</sup>), (63/3<sup>rd</sup>), Article (65/2<sup>nd</sup>), Article (70/2<sup>nd</sup>), Article (71), Article (72), and Article (75) of Law No. (13) of the 2023 Federal Budget of the Republic of Iraq For the years (2023 – 2024 – 2025) based on the provisions of Articles (151/152) of the Civil Procedure Law No. (83) of 1969 (as amended), and Article (39) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 until the case is resolved, its unconstitutionality is ruled and invalidated, and the defendant is burden with fees, expenses and avocacy fees, while

*saady*



Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

reserving the right to challenge other articles of the law above, The case was registered with this court in the number (153/Federal/2023), and the legal fee was collected and the defendant was informed of its petition and documents in accordance with the provisions of Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and his agent replied with the reply list dated 18/7/2023 and the additional dated 20/7/2023, which included the following: 1. Granting the Governor the authority to contract with developers as part of the executive authority and in his capacity as the highest CEO in the governorate based on the provisions of Articles (122/3<sup>rd</sup>) of the Constitution and (24) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, he is aware of the affairs and needs of his governorate, and he will not be free, rather, it will be restricted by the investment law in force, but the plaintiff's appeal, in addition to his job, to this text and his desire to make the matter the competence of the Federal Council of Ministers, is a desire that intersects with the administrative decentralization stipulated in the Constitution in Article (122/2<sup>nd</sup>) thereof (the governorates that are not organized in a region are granted broad administrative and financial powers to enable them to manage their affairs following the principle of administrative decentralization and this is regulated by law) if the governor is not granted that authority for his governorate and under the budget law. The Investment Law is necessarily in force, following the legislation in effect, so what competencies will be available to it in this regard, and what will remain for the system of administrative decentralization to be applied on the ground? noting that Article (110) of the Constitution did not stipulate that (contracting with developers) is considered an exclusive competence of the federal authorities so that the plaintiff has the right to try to take away this local jurisdiction and make

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

it one of the central competencies. 2. Article (16/2<sup>nd</sup>) of the challenged law requires that granting an employee with the rank of general manager who does not manage an administrative formation at the level of a general directorate or consultant outside the staff a five-year leave with a nominal salary or assigning him to manage a formation corresponding to his grade or referring them to retirement at their request was to ensure the consistency of the text regarding referral to retirement with the Unified Retirement Law No. (9) of 2014 as amended, as for the administrative chaos in the country in which he complains. The plaintiff should take responsibility in particular; because he was the body appointing the aforementioned addresses and assigning them to the aforementioned positions, and the employee who has not reached the legal age for mandatory retirement mustn't be referred to retirement except at his request in respect of his acquired rights and line with the Unified Retirement Law. 3. Article (20/VI) of the challenged law came to reduce the heavy bureaucracy surrounding this file, and the claim that the government needs to monitor the work of the subcommittees on property compensation is not valid, as the work of these committees will remain subject to the control of regulatory bodies such as the Financial Audit Bureau and the Integrity Commission, as for the plaintiff's argument that experience has proven the invalidity of granting subcommittees the authority to decide on compensation decisions on the basis of suspicions of corruption. The waste of public funds is without evidence, and the plaintiff did not indicate where the challenged text intersected with a constitutional provision so that he could challenge it before a court competent to consider the constitutionality of laws, and not to consider arguments that are not based on objective justifications. 4. Articles (28/4<sup>th</sup>/Alif, Beh) and (57/1<sup>st</sup>/Jim) of the challenged law do not intersect with a constitutional text until the plaintiff requests a ruling

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

on their unconstitutionality or challenges them before a court competent to consider the constitutionality of laws, and the text does not represent any burden on the state budget or a mandate for the government to find a way to finance, but the text came in response to the request of the Martyrs Foundation under their letter No. (Dal. Sad. 839) on 10/5/2023, and the request was met with my representatives. The people approved it and identified a way for it to be financed without burdening the state budget or the government. 5. Article (65/2<sup>nd</sup>) of the challenged law was enacted by the Council of Representatives to encourage the private sector and develop the deplorable health, production, and agricultural reality, the claim that the private sector is governed by the principle of profit and loss and that this is a reason for its exclusion from the mentioned activities, but it is a lawsuit belonging to decades ago in the times of backward socialist economic systems that do not leave room for the private sector to contribute to the renaissance and urbanization, and perhaps the plaintiff's knowledge of the health, productive and agricultural reality in developed countries that involve the private sector in all fields will suffice him to withdraw his claim in this regard, where life and services flourish because of their establishment on the foundations of Investment, profit and loss and free competition, If the public sector has fulfilled its obligations towards the state and society in the aforementioned fields and provided structures and services therein on the basis of funding from the state budget away from the principles of profit and loss, it may demand that it adhere to its role in this regard. 6. Articles (62/4<sup>th</sup> and 63/3<sup>rd</sup>) of the challenged law, which excluded the Council of Representatives from suspending appointments within the limits of (150) contractors, the Supreme Judicial Council and the Federal Supreme Court, are articles compatible with the Constitution, as each of these bodies has its own budget and the need is urgent to

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contract to ensure the regularity of its workflow and to face the shortage of staff and the magnitude of the tasks and duties entrusted to them, which was confirmed by the letter of the Supreme Judicial Council / Department of Financial and Administrative Affairs. Issue (95/Mim.Jim/2023) on 18/7/2023 regarding his request to allow the possibility of contracting with some contractors to conduct the work and ensure its regularity and permanence. 7. Article (70/2<sup>nd</sup>) of the challenged law does not represent a burden on the government, as it represents the fulfillment by the state of the rights of contractors in return for completing parts of the work represented by the completed arms, so does the plaintiff seek not to disburse the rights of contractors with the governorates despite their completion of stages of the work contractors to complete them and provide evidence that they have completed them with evidence of completed projects. 8. Article (71) of the challenged law represents an important text that puts a solution to the problem of appointment by proxy that was created and updated by the plaintiff years ago so that he does not meet the formality required by the constitution, and the plaintiff has previously challenged a similar text, which is the text of Article (58) of the Federal Budget Law for the year 2021, and the Federal Supreme Court decided in paragraph (10) of its decision No. (35/Federal/2021) to dismiss his lawsuit and the requirement of that recognition of the constitutionality of the challenged text at the time. 9. Article 72 of the challenged law does not burden the Government in any way and has been approved by the Iraqi legislator as a way to advance the reality of the implementation directorates in the Ministry of Justice, given the trouble and hardship suffered by their staff when collecting debts. 10. Article (75) of the challenged law does not conflict with the Constitution and represents a legislative will that the Council of Representatives has the right to express with its competence

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

to legislate laws under the Constitution, so this court was asked to dismiss the lawsuit in form and substance and to charge the plaintiff all expenses. After completing the procedures required by the above-mentioned rules of procedure, the court set a date for the pleading based on Article (21/3<sup>rd</sup>) thereof and notified the parties, on the specified day, the court was formed, and the plaintiff's agent and the defendant's agent attended, and the public presence pleadings were initiated, the plaintiff's agent repeated what was stated in the lawsuit petition and requested judgment according to what was stated in it, the defendant's agent answered and requested the dismissal of the lawsuit for the reasons stated in the list linked to the lawsuit papers, and each party repeated his previous statements and requests, and where there is nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiff, the Prime Minister, being in this capacity, filed the lawsuit through his representative, before this court to challenge the constitutionality: Article (2/1<sup>st</sup>/8/Jim/6), the phrase (at his request) mentioned in Article (16/2<sup>nd</sup>), Article (20/6<sup>th</sup>), Articles (28/4<sup>th</sup>/Alif, Beh) and (57/1<sup>st</sup>/Jim), Articles (62/4<sup>th</sup>), (63/3<sup>rd</sup>), Article (65/2<sup>nd</sup>), Article (70/2<sup>nd</sup>), Article (71), Article (72), and Article (75). From Law No. (13) of 2023 Federal Budget of the Republic of Iraq for the years (2023 – 2024 – 2025) - published in the Iraqi Gazette No. (4726) dated 26/6/2023, he requested a ruling to issue a state order to suspend its implementation based on the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969 (as amended), and Article (39) of

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 until the case is resolved, its unconstitutionality is ruled and invalidated, and the defendant / being in this capacity is charged with fees, expenses, and attorney's fees, while retaining the right to challenge other articles of the aforementioned law, on the basis that the defendant, the Speaker of the Council of Representatives, being in this capacity when approving the law - the subject of the challenge - included in it several articles that were not included in the draft law submitted by the government to the Council of Representatives or amended, and that these additions constitute a constitutional violation of the provisions of the Constitution of the Republic of Iraq of 2005 in both formal and substantive terms, especially Articles (47) which affirmed the principle of separation of powers, and (60) which stipulated (First: Draft laws submitted by the President of the Republic and the Council of Ministers. Second: Proposals for laws submitted by ten members of the Council of Representatives, or by one of its competent committees), and (62) which stipulates (First: The Council of Ministers shall submit the draft law on the general budget and the final account to the Council of Representatives for approval. Second: The Council of Representatives, the procedure of transfer between the chapters and chapters of the general budget...) as well as contrary to what was settled by the constitutional judiciary in Iraq and some relevant legislation and decisions in force following the detail referred to in the lawsuit petition, After examining and reviewing the statement of claim and the requests contained therein, the defendant's drafts, being in this capacity, and the defenses and requests of the parties' agents, the Federal Supreme Court reached the following:

First: From a formal point of view: The plaintiff's lawsuit / being in this capacity is admissible in form due to the availability of the conditions

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

for its establishment stipulated in Articles (44, 45, 46, and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the interest condition stipulated in Article (6) thereof, and the fulfillment of the conditions stipulated in Article (22) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulated that ((The challenge to the constitutionality of the Federal Budget Law or any text therein shall be submitted, by the authorities and bodies stipulated in Article (19) of this Law, within a period not exceeding thirty days from the date of its publication in the Official Gazette... The court shall decide on the appeal within a period not exceeding thirty days from the date of its registration, unless otherwise necessary)) and following Article (19) thereof, which stipulates that (for any of the three federal authorities, ministries, independent bodies, the Prime Minister of the region, non-ministry entities and governors, request the court to rule on the constitutionality of a legal text or system ...) The Federal Budget Law for the years (2023-2024-2025) was published in the Iraqi Gazette No. (4726) dated 26/6/2023, the fee for the constitutional challenge lawsuit filed by the plaintiff / being in this capacity was collected on 26/6/2023, which means that the appeal was made within the legal period referred to in Article (22) of the Rules of Procedure, and the plaintiff, being in this capacity, is one of the federal authorities, ((in application of the provisions of Articles (47 and 66) of the Constitution)), referred to in Article (19) of the aforementioned Rules of Procedure, which has the right to challenge the constitutionality of the Budget Law, therefore, it was decided to accept the plaintiff's lawsuit / being in this capacity in form. Second: From a substantive point of view: Upon consideration of the subject matter of the lawsuit and the requests contained therein, it was found that they focus on challenging the constitutionality of: Article (2/1<sup>st</sup>/8/Jim/6) and the phrase (at his

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

request) mentioned in Article (16/2<sup>nd</sup>), Article (20/4<sup>th</sup>), Articles (28/4<sup>th</sup>/Ali, Beh) and (57/1<sup>st</sup>/Jim), Articles (62/4<sup>th</sup>), (63/3<sup>rd</sup>), Article (65/2<sup>nd</sup>), Article (70/2<sup>nd</sup>), Article (71), Article (72), and Article (75) of Law No. (13) of 2023 The Federal Budget of the Republic of Iraq for the years (2023 – 2024 – 2025), it included two requests: The first - the issuance of an urgent state order to suspend the implementation of the articles whose constitutionality is contested, and that the Federal Supreme Court issued a state order No. (153/Federal/State Order/2023) on 12/7/2023 for the reasons detailed therein, according to which it decided the following: ((First: Suspending the entry into force of Articles ((28/4<sup>th</sup>/Alif, Beh), (57/1<sup>st</sup>/Jim), (65/2<sup>nd</sup>), (70/2<sup>nd</sup>), (71) and (75) of the law - the subject of the challenge - until the constitutional lawsuit filed before this court is decided No. (153/Federal/2023). Second: Rejection of the request of the applicant to issue the state order of the Prime Minister / being in this capacity containing the demand to suspend the implementation of articles ((2/1<sup>st</sup>/8/Jim/6) and the phrase (at his request) mentioned in the article (16/2<sup>nd</sup>), (20/6<sup>th</sup>), (62/4<sup>th</sup>), (63/3<sup>rd</sup>) and (72) of the law - the subject of the challenge. The second request of the plaintiffs included a claim to rule the unconstitutionality of the articles challenged by the aforementioned constitutionality and to charge the defendant in addition to his job fees, expenses, and advocacy fees. The Federal Supreme Court, after reviewing the articles whose constitutionality is challenged, finds the following: 1- Regarding the challenge to the constitutionality of Article (2/1<sup>st</sup>/8/Jim/6) of the law - the subject of the challenge - which stipulates that ((Governors exclusively have the right to contract with developers following the investment law in force after sorting the lands according to urban planning maps in the governorate, provided that the developer rehabilitates these lands with all services (road networks, water, ground

*saady*



Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

electricity, sewage sewers, optical cable, public parks or any other services), and they are sold to the citizen for an amount to be determined part of it cover the cost of the services that Spent by the developer, and this provision applies to new cities)), the Federal Supreme Court finds that this text was initiated to create new cities in which the full infrastructure is available in order to facilitate their development and exploitation in order to provide good and adequate housing for the citizen and to promote the economic and urban reality in the country, and that the governor represents the executive authority in the province and must abide by the general policy of the state, for which the Prime Minister is directly responsible based on the provisions of Article (78) of the Constitution, and that the activation of administrative decentralization requires granting the governor some powers, provided that these powers shall be exclusive to the same governor, thus robbing the Prime Minister of his inherent competence in implementing the general policy of the state, therefore, limiting the authority to contract with developers in accordance with the Investment Law in force, to the governor exclusively, also contradicts the planning of the general policy of the state exercised by the Council of Ministers under its competencies stipulated in Article (80/1<sup>st</sup>) of the Constitution, which emphasized the promotion of investment in all ministries and entities not associated with the ministry and the governorates in order to advance and develop the process of economic and social development and bring technical and practical expertise and human resources development, especially since the Council of Ministers issued its resolution No. (23121) for the year 2023, under which a technical team was formed to accelerate investment procedures and establish new cities, On the basis of the foregoing, the phrase (exclusively) contained in Article (2/1<sup>st</sup>/8/Jim/6) is contrary to the provisions of Articles (78 and 80/1<sup>st</sup>) of the Constitution, which

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

requires a ruling on the unconstitutionality of the aforementioned phrase. 2- Regarding the challenge to the constitutionality of the phrase (at his request) mentioned in the last part of Article (16/2<sup>nd</sup>) of the law - the subject of the challenge - which stipulated that ((to the Council of Ministers based on the proposal of the Minister or the head of the entity not associated with the ministry Granting an employee with the rank of (general manager) who does not manage an administrative formation at the level of a general directorate or a consultant outside the staff leave for a period of five years with a nominal salary upon his request or assigning him to manage a formation corresponding to his grade or referring them to retirement at his request as an exception to the Unified Retirement Law No. (9) of (2014) as amended)), and the Federal Supreme Court finds that the phrase (at his request) mentioned in the last part of this article would restrict the powers of the Council of Ministers and its constitutional competencies, especially those stipulated in Article (80/1<sup>st</sup>) in planning and implementing the general policy of the state, and general plans, supervising the work of ministries and entities not associated with a ministry, and preventing it , he pointed out the treatment of job laxity in the number of employees of the higher grades and the continued chaos at the level of administrative structures in the state resulting from the appointment of general managers without their management of a general directorate or the assignment of consultants despite the absence of the laws of the authorities assigned to them of those grades, which requires addressing the confused administrative structure in state departments based on the competence and constitutional powers of the Council of Ministers without being restricted at the request of the person concerned with its content, on the basis of the foregoing, the phrase (at his request) mentioned in the last part of Article (16/2<sup>nd</sup>) of the law - the subject of the challenge - is a

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violation for the provisions of the Constitution in Article (80/1<sup>st</sup>) thereof, which requires a ruling on its unconstitutionality. 3- Regarding the challenge to the constitutionality of Article (20/6<sup>th</sup>) of the law - the subject of the challenge - which stipulates that ((The subcommittees shall submit special decisions to compensate properties whose amounts do not exceed (50,000,000) fifty million dinars as an exception to the provisions of Article (13) of Law No. (2) of 2020, and the Central Committee is obligated to complete and return the files to the subcommittees within a period not exceeding (30) (thirty) working days)), the Federal Supreme Court finds that Article (27/1<sup>st</sup>) of the Constitution which stipulated that (public funds are inviolable, and protecting them is the duty of every citizen), and that activating this constitutional text requires tightening control over public funds, and this is what was adopted in Law No. (2) of 2020, through the formation of judicial committees tasked with verifying the validity of the decisions issued by the subcommittees, if the amount of compensation does not exceed thirty million dinars and the adoption of the text - the subject of the challenge would lead to a waste of public money, and prevent the competent judicial authorities from exercising their role in auditing and follow-up, which negatively affects the file of compensation for the property of those affected by military operations, military errors and terrorist operations, which means violating Article (20/6<sup>th</sup>) of the law. The subject of the challenge - the provisions of Article (27/1<sup>st</sup>) of the Constitution, which requires a ruling on its unconstitutionality. 4- Regarding the challenge to the constitutionality of Article (28/4<sup>th</sup>/Alif, Beh) of the law - the subject of the challenge - which stipulates that ((Alif- Obliging the Ministry of Finance to collect one-thousandth of the total salary of state employees (except the Ministry of Interior) to be placed in the (Martyrs Fund) of the Martyrs Foundation referred to in

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Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

Article (10/3<sup>rd</sup>) of the Foundation's Law, allocated to those covered following Law No. (2) of (2016) and Law No. (20) of (2009) amended following the controls issued by the Martyrs Foundation. Beh-Deduction of one percentage of one thousand. of the pensions and grants of those covered by Law No. (2) of 2016 and Law No. (20) of 2009 as amended and transferred to the account of the Martyrs Fund to develop the financial resources of the institution for those covered by the above two laws)), Article 57/1<sup>st</sup>/Jim of the challenged law stipulates that a fund shall be established in the Ministry of Interior called the Fund for the Development and Support of the Internal Security Forces with legal personality and financial and administrative independence, the revenues of which shall consist of the following: Jim- (0.001%) (one-thousandth of a percent) of the total salary of the employees of all ministries (military and civilian), provided that the deductible amount is not less than (1000) (one thousand dinars) for each affiliate)), and the Federal Supreme Court finds that the deduction of amounts and according to their percentage in the two texts - is subject to challenge from the salaries of employees, military and civilian, retirees, and those covered by Law No. (2) of 2016 and Law No. (20) of 2009 to support the Martyrs Fund of the Martyrs Foundation or to support the internal Security Forces Development and Support Fund, according to the details contained in the two texts - the subject of the challenge - would contradict the general policy of the State in supporting its employees who are continuing in service and retirees and improving their living conditions, this also contradicts the state's program and constitutional duties in supporting the groups covered by the Martyrs Foundation Law and members of the Internal Security Forces and providing the necessary funds for the Martyrs Fund covered by the Foundation's Law or the Internal Security Forces Support Fund through the financial

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

policy followed in light of the budget law and the funds required by that support, based on the review of the salaries and allowances of employees in all state departments in a way that ensures the elimination of discrimination between those with similar positions of employees, and that the percentage of deduction under the two texts - the subject of the challenge - has not been clarified in them, whether it is monthly or annual, and that this would raise unjustified jurisprudence at the level of application and contradicts the right of private ownership of salaries and entitlements and the right to enjoy their amounts without shortage or deduction for those who were covered by them in application of the provisions of Article (23/1<sup>st</sup>) of the Constitution, which stipulates that (private property is inviolable, and the owner has the right to use, exploit and dispose of it within the limits of the law), on the basis of the foregoing, the two texts - the subject of the challenge - contradict the provisions of Article (23/1<sup>st</sup>) of the Constitution and the provisions of Articles (78 and 80/1<sup>st</sup>, 4<sup>th</sup>) of the Constitution, which affirmed the competence of the Council of Ministers in planning and implementing the general policy of the State, and preparing the draft budget, final account and development plans, and that the direct executive responsible for it is the Prime Minister, especially since the two texts - the subject of the challenge - were not included in the draft budget law sent by the government to the Council of Representatives in accordance with what is established in the draft budget when reviewed, thus, they also contradict the text of Article (62/1<sup>st</sup>) of the Constitution, which stipulates that (the Council of Ministers submits the draft law on the general budget and the final account to the Council of Representatives for approval), (and the Council of Representatives may make transfers between the sections and chapters of the general budget, and reduce its total amounts, and may, when necessary, propose to the Council of

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Ministers to increase the total amount of expenditures) based on the provisions of item (2<sup>nd</sup>) of the same article, because draft laws in general, (other than the draft budget law) shall be submitted by the President of the Republic and the Council of Ministers to the Council of Representatives for approval, while the proposals for laws shall be submitted by ten members of the Council of Representatives or one of its competent committees in application of the provisions of Article (60 /1<sup>st</sup>, 2<sup>nd</sup>) of the Constitution, taking into account the competence of the Council of Representatives to legislate federal laws based on the provisions of item (1<sup>st</sup>) of Article (61) of the Constitution, provided that they do not affect the principle of separation of powers, do not entail financial burdens on the government, and do not conflict With the general policy of the state, it shall not affect the functions or independence of the judiciary, and shall not violate the provisions of the Constitution, and the violation of Articles (28/4<sup>th</sup>/Alif) and (57/1<sup>st</sup>/Jim) subject to challenge - of the provisions of the Constitution in accordance with the aforementioned detail, which requires a ruling of their unconstitutionality. 5- Regarding the challenge to the constitutionality of Article (70/2<sup>nd</sup>) of the law - the subject of the challenge - which stipulates that ((The Ministry of Finance must add additional allocations to the work arms completed for the governorates within the regional development plan and expenditures from the period (1/1/2023) to (1/6/2023), and these amounts are calculated as an additional allocation to those governorates)), and the Federal Supreme Court finds that the text under challenge is contrary to the provisions of the Constitution in Article (62 /1<sup>st</sup> and 2<sup>nd</sup>) thereof; by not including it in the government draft budget sent by the Council of Ministers to the Council of Representatives and for not taking the government's opinion when enacting it contrary to the provisions of Article (61/1<sup>st</sup>) of the

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Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

Constitution because of its impact on increasing the amounts of expenditures assessed in the government project and imposing new financial burdens on the government without obtaining its approval, which requires ruling the unconstitutionality of Article (70/2<sup>nd</sup>) of the law - subject to the challenge. 6- Regarding the challenge to the constitutionality of Article (71) of the law - the subject of the challenge - which stipulates that ((the government is committed to ending the management of all state institutions by proxy no later than (30/11/2023), provided that the concerned department stops all financial allocations and administrative powers in the event that they continue after the above-mentioned date, and the Council of Ministers must send the names of those charged with the positions of heads of independent bodies, special grades (Alif, Beh) undersecretaries of ministries and advisers to the Council of Representatives (30) (thirty) days before the above date, and the Council of Representatives is obligated to take Decision to vote within (30) days from the date of sending the names)), the Federal Supreme Court finds that the challenged text does not contravene the provisions of the Constitution, and it is not possible to say that it would restrict the powers of the Council of Ministers in exercising its powers stipulated in the Constitution relating to the preparation of general plans and supervising the work of ministries and bodies not associated with a ministry by ensuring the continuation of the work of state departments regularly and steadily in a manner that serves the public interest and the selection of their leaders on the basis of experience, competence, specialization and integrity. Supreme and private until the selection of the appropriate, and that restricting the government to a specific period of time for the end of the mandate without the presence of the appropriate will lead to the disruption of state institutions and harm them because of the possibility that the

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unworthy of the position of the incompetent, this negatively affects the public service and restricts the administration represented by the government and the Council of Ministers from exercising their discretionary powers in selecting qualified people in accordance with the aforementioned controls, which reflects negatively on the job and the public interest together, in addition to the interference of the challenged text on the competence and powers of the Council of Ministers by the Council of Representatives, especially those related to its competence in recommending to the Council of Representatives the approval of the appointment of the higher and special grades referred to in paragraph (5<sup>th</sup>) of Article (80) of Constitution by setting a specific time limit, this would prejudice the principle of separation of powers stipulated in Article 47 of the Constitution and violate its concept based on a flexible separation of powers based on cooperation when exercising their powers without interfering and infringing on them, which requires ruling on the unconstitutionality of Article 71 of the Law - the subject of the challenge. 7- As for the challenge to the constitutionality of Articles ((62/4<sup>th</sup>), (63/3<sup>rd</sup>), (65/2<sup>nd</sup>), (72), (75)) of the law - the subject of the challenge - the Federal Supreme Court finds that these articles do not include a violation of the provisions of the Constitution of the Republic of Iraq of 2005 in any of its articles and would not violate its provisions, because some of them are mentioned within the government draft budget in application of the provisions of Article (62/I) of the Constitution and to legislate others based on the competence of the Council of Representatives in that regard in application of the provisions of Articles (62/2<sup>nd</sup>). and (61/1<sup>st</sup>) of the Constitution in accordance with the controls of legislation based on the basis that it does not affect the principle of separation of powers, it does not entail financial burdens on the government, does not conflict with the general policy of the state,

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does not affect the functions or independence of the judiciary, and does not violate the provisions of the Constitution, which requires the dismissal of the challenge to its constitutionality, noting that the Federal Supreme Court decided in the session dated 7/8/2023 not to accept the request of the plaintiff's deputy / in addition to his job dated 7/8/2023, to create an organized incident lawsuit to challenge the constitutionality of Article (2/1<sup>st</sup>/4/Heh) and the phrase (according to population percentages) mentioned in the articles ((2/1<sup>st</sup>/4/Alif/2), (2/1<sup>st</sup>/4/Zin), (2/2<sup>nd</sup>/Second Axis/Beh), (14/4<sup>th</sup>/Beh)), Article (64/1<sup>st</sup>) and Article (69) and issuing a state order to suspend the implementation of the aforementioned articles, due to the expiry of the period stipulated in the Internal Regulations of the Federal Supreme Court No. (1) of 2022 in Article (22) thereof, which determined the period during which the challenge to the constitutionality of articles of the Budget Law is submitted, and the court also rejected the request of the plaintiff's agent to annul the petition regarding the challenge to the constitutionality of Articles ((28 /4<sup>th</sup>/ Alif, Beh) and (57/1<sup>st</sup>/Jim)) of the law - the subject of the challenge - because the lawsuit has become ready for resolution, in addition to that the request submitted by the legal representative of the Ministry of Justice to enter a third person in the lawsuit regarding the plaintiff's challenge to Article (72) of the law, the court decided to reject it because the lawsuit is ready for taking a decision,

First: The unconstitutionality of the phrase (exclusively) contained in Article (2/1<sup>st</sup>/8/Jim/6) and the phrase (at his request) contained in the last part of Article (16/2<sup>nd</sup>), Article (20/6<sup>th</sup>), Article (28/4<sup>th</sup>/Alif), Article (57/1<sup>st</sup>/Jim), Article (70/2<sup>nd</sup>) and Article (72) of Law No. (13) of the 2023 Federal Budget of the Republic of Iraq for the fiscal years (2023 – 2024 – 2025), for violating the provisions of the Constitution of the Republic of Iraq for the year 2005.

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Republic of Iraq  
Federal Supreme Court  
Ref. 153 / federal /2023



Kurdish text

Second: Dismissal of the lawsuit of the plaintiff Prime Minister / being in this capacity regarding the challenge to the constitutionality of Articles (28/4<sup>th</sup>/Beh), (62/4<sup>th</sup>), (63/3<sup>rd</sup>), (65/2<sup>nd</sup>), (71) and (75) of Law No. (13) of 2023 - The Federal General Budget of the Republic of Iraq for the fiscal years (2023 – 2024 – 2025) for the absence of a constitutional violation.

Third: Charging the parties with the relative fees and expenses and charging each party the attorney's fees of the other party's attorney an amount of (one hundred) thousand dinars to be distributed following the law.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021, within the meaning of Article (19) thereof, published in the Iraqi Gazette No. (4679) on 13/6/2022, the decision has been made clear on 19/Muharram Al-Haram/1445 Hijri coinciding with 7/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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